

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	U.S. EPA Docket No.: FIFRA-02-2005-5301
Martex Farms, S.E. Rd. No. 1, Km. 96.2 Santa Isabel, Puerto Rico 00757	:	Second Amended Complaint and Notice of Opportunity for Hearing
Respondent	:	Proceeding under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 1361(a).

**I. INTRODUCTION**

1. This First Amended Complaint and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 1361(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22, a copy of which is attached to this Complaint. The Complainant is the Director, Special Litigation and Projects Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency ("EPA"). The Respondent is Martex Farms, S.E. ("Martex").
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. Respondent is hereby notified of EPA's determination that Respondent has violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the worker protection regulations at 40 C.F.R. Part 170, a copy of which is attached to this Complaint. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty against any person determined to be in violation of any requirement of FIFRA or EPA's regulations thereunder.

**II. COMPLAINT**

**Findings of Fact and Conclusions of Law**

4. Respondent, Martex Farms, S.E., is incorporated in the Commonwealth of Puerto Rico.

5. Respondent is therefore a “person” within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s) and as such is subject to the requirements of FIFRA and the regulations promulgated thereunder, including the Worker Protection Standard (“WPS”), codified at 40 C.F.R. Part 170.
6. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Jauca facility, located at Road No. 1, Km 96.2, Santa Isabel, Puerto Rico (“Jauca facility”) for the commercial production of various fruits and ornamental plants.
7. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Coto Laurel facility, located at Road 511 Km 1.0, Bo. Real Anon, Ponce, Puerto Rico (“Coto Laurel facility”) for the commercial production of mangoes.
8. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Viveros facility, located at Road 545, Paso Seco Ward, Santa Isabel, Puerto Rico (“Viveros facility”) for the commercial production of ornamental plants.
9. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Finca Rio Canas facility, located at Bo. Rio Canas Abajo, Sector Casa Blanca, Road No. 535, Km. 2, Juana Diaz, Puerto Rico (“Finca Rio Canas facility”) for the commercial production of mangoes.
10. Therefore, Respondent produces and at all times pertinent to this Complaint has produced “agricultural plants” at its Jauca, Coto Laurel, Viveros, and Finca Rio Canas facilities, as that term is defined by 40 C.F.R. § 170.3.
11. Respondent engages and at all times pertinent to this Complaint has engaged in the outdoor production of agricultural plants at its Jauca, Coto Laurel, Viveros, and Finca Rio Canas facilities.
12. Therefore, Respondent’s Jauca, Coto Laurel, Viveros, and Finca Rio Canas facilities are and at all times pertinent to this Complaint have been “farms,” as that term is defined by 40 C.F.R. § 170.3.
13. Therefore, Respondent’s Jauca, Coto Laurel, Viveros, and Finca Rio Canas facilities are and at all times pertinent to this Complaint have been “agricultural establishments,” as that term is defined by 40 C.F.R. § 170.3.

14. Therefore, Respondent is and at all times pertinent to this Complaint has been an "owner" of an agricultural establishment covered by the regulations at 40 C.F.R. Part 170, as that term is defined by 40 C.F.R. § 170.3.
15. Respondent hires and at all times pertinent to this Complaint has hired persons to perform activities related to the production of agricultural plants on its farms.
16. Therefore, Respondent has and at all times pertinent to this Complaint has had "workers," as that term is defined by 40 C.F.R. § 170.3.
17. Therefore, Respondent is and at all times pertinent to this Complaint has been an "agricultural employer," as that term is defined by 40 C.F.R. § 170.3.
18. At all times relevant to this Complaint, Respondent has had persons who are employed to mix, load, transfer, and apply pesticides, handle opened containers of pesticides, and assist with the application of pesticides.
19. Therefore, Respondent has and at all times pertinent to this Complaint has employed "handlers" and is thus a "handler employer" as those terms are defined by 40 C.F.R. § 170.3.
20. Respondent is and at all times pertinent to this Complaint has been a "private applicator" within the meaning of section 2(e)(2) of FIFRA.
21. FIFRA § 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.
22. An authorized Puerto Rico Department of Agriculture ("PRDA")-EPA Pesticides Inspector visited Respondent's Coto Laurel facility with the consent of Respondent on August 20, 2003, to inspect it for compliance with the FIFRA statute and regulations.
23. On September 26, 2003, PRDA issued a Notice of Warning to Respondent for violating FIFRA at its Coto Laurel facility by using registered pesticides in a manner inconsistent with its labeling. The violations identified involved the application of pesticides without complying with FIFRA and several requirements of the WPS. The provisions violated included FIFRA § 12(a)(2)(G), 40 C.F.R. §§ 170.120, 170.122, 170.130, 170.150, 170.222, and 170.250.
24. An authorized PRDA-EPA inspector visited Respondent's Viveros facility with the consent of Respondent on September 5, 2003, to inspect it for compliance with the FIFRA statute and regulations.



25. On October 6, 2003, PRDA issued a Notice of Warning to Respondent for violating FIFRA at its Viveros facility by using registered pesticides in a manner inconsistent with its labeling. The violations identified involved the application of pesticides without complying with FIFRA and several requirements of the WPS. The provisions violated included FIFRA § 12(a)(2)(G), 40 C.F.R. § 170.130.
26. An authorized PRDA-EPA inspector visited Respondent's Finca Rio Canas facility with the consent of Respondent on September 5, 2003, to inspect it for compliance with the FIFRA statute and regulations.
27. On October 29, 2003, PRDA issued a Notice of Warning to Respondent for violating FIFRA at its Finca Rio Canas facility by using registered pesticides in a manner inconsistent with its labeling. The violations identified involved the application of pesticides without complying with FIFRA and several requirements of the WPS. The provisions violated included FIFRA § 12(a)(2)(G), 40 C.F.R. §§ 170.122, 170.130, 170.150, and 170.222.
28. An authorized PRDA-EPA inspector visited Respondent's Jauca facility with the consent of Respondent on September 5, 2003, to inspect it for compliance with the FIFRA statute and regulations.
29. On October 30, 2003, PRDA issued a Notice of Warning to Respondent for violating FIFRA at its Jauca facility by using registered pesticides in a manner inconsistent with its labeling. The violations identified involved the application of pesticides without complying with FIFRA and several requirements of the WPS. The provisions violated included FIFRA § 12(a)(2)(G), 40 C.F.R. §§ 170.122, 170.130, 170.150, and 170.222.
30. An authorized PRDA-EPA Pesticides inspector visited Respondent's Jauca facility with the consent of Respondent on April 26, 2004, to inspect it for compliance with FIFRA and its implementing regulations.
31. During the April 26, 2004 inspection, "workers," within the meaning of 40 C.F.R. § 170.3, were present at the Jauca facility.
32. Subpart B of the WPS, which sets standards for workers, requires that when workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a restricted-entry interval ("REI") has been in effect, the agricultural employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.122.
33. The WPS requires that when workers are on an agricultural establishment, specific information regarding each pesticide application made at the establishment shall be posted: (a) if warning signs are posted for the treated area before an application, the

specific application information for that application shall be posted at the same time or earlier; or (b) the information shall be posted before the application takes place if the workers will be on the establishment during application; if the worker will not be on the establishment before the application takes place, such information shall be posted at the beginning of any such worker's first work period; and (c) such information shall continue to be displayed for at least 30 days after the end of the application or until the workers are no longer on the establishment. 40 C.F.R. § 170.122.

34. The WPS requires that pesticide application information required under 40 C.F.R. § 170.122 shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s) of the pesticide; (c) the time and date the pesticide is to be applied; and (d) the REI for the pesticide. 40 C.F.R. § 170.122(c).
35. The WPS requires agricultural employers to provide decontamination supplies for workers whenever a worker is performing an activity in the area where a pesticide was applied or an REI was in effect within the last 30 days and the worker contacts anything that has been treated with the pesticide, including but not limited to, soil, water, or surfaces of plants. 40 C.F.R. § 170.150.
36. Decontamination supplies required by the WPS include: enough water for routine washing and emergency eyeflushing (40 C.F.R. § 170.150(b)(1)), and soap and single-use towels in quantities sufficient to meet workers' needs (40 C.F.R. § 170.150(b)(3)).
37. Decontamination supplies are required to be reasonably accessible to and not more than 1/4 mile from where workers are working. 40 C.F.R. § 170.150(c).
38. During the April 26, 2004 inspection, "handlers," within the meaning of 40 C.F.R. § 170.3, were present at the Jauca facility.
39. Subpart C of the WPS, which sets standards for handlers, requires that when handlers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or an REI has been in effect, the agricultural employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.222.
40. The WPS requires that when handlers are on an agricultural establishment, specific information regarding each pesticide application shall be posted: (a) if warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier; or (b) the information shall be posted before the application takes place if the handlers will be on the establishment during application; if the handler will not be on the establishment before the application takes place, such information shall be posted at the beginning of any such handler's first



work period; and (c) such information shall continue to be displayed for at least 30 days after the end of the application or until the handlers are no longer on the establishment. 40 C.F.R. § 170.222(b).

41. The WPS requires that pesticide application information required under 40 C.F.R. § 170.222 shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s) of the pesticide; (c) the time and date the pesticide is to be applied; and (d) the REI for the pesticide. 40 C.F.R. § 170.222(c).
42. The WPS requires handler employers to provide decontamination supplies for handlers during any handling activity. 40 C.F.R. § 170.250.
43. Decontamination supplies required for handlers by the WPS include: enough water for routine washing, emergency eyeflushing, and washing the entire body in case of emergency (40 C.F.R. § 170.250(b)(1)), and soap and single-use towels in quantities sufficient to meet handlers' needs (40 C.F.R. § 170.250(b)(3)).
44. Decontamination supplies are required to be reasonably accessible to and not more than 1/4 mile from where handlers are working. 40 C.F.R. § 170.250(c).
45. Additionally, the employer shall provide soap, clean towels, and a sufficient amount of water at the site where handlers remove personal protective equipment ("PPE") so that handlers may wash thoroughly at the end of any exposure period. 40 C.F.R. § 170.250(e).
46. The WPS requires that any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment ("PPE") specified on the labeling for use of the product. 40 C.F.R. § 170.240(a).
47. When PPE is specified by the labeling of any pesticide for any handling activity, the WPS requires that the handler employer shall provide the appropriate PPE in clean and operating condition to the handler. 40 C.F.R. § 170.240(c).
48. The WPS states that the handler employer shall assure that PPE is used correctly and for its intended purpose, that before each day of use, all PPE is inspected for damage, that all PPE is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse, and that all PPE is stored separately from personal clothing and apart from pesticide-contaminated areas. The handler employer shall also assure that handlers have a clean place away from pesticide storage and use areas where they may store personal clothing not in use and put on/remove PPE. 40 C.F.R. §§ 170.240(e)-(f).

49. An authorized PRDA-EPA inspector visited Respondent's Coto Laurel facility with the consent of Respondent on April 26, 2004, to inspect it for compliance with the FIFRA statute and regulations.
50. During the April 26, 2004 inspection "handlers," within the meaning of 40 C.F.R. § 170.3 were present at the Coto Laurel facility.
51. Each of the pesticides described below is a registered pesticide and each has an EPA-approved label setting forth specific directions regarding its use. The label for each of these pesticides that was in effect at all times relevant to this Complaint requires, among other things, compliance with the WPS codified at 40 C.F.R. Part 170:
- Boa, EPA Reg. No. 1812-420;  
Clear Out 41 Plus, EPA Reg. No. 70829-3;  
Kocide 101, EPA Reg. No. 1812-288;  
Trilogy 90EC, EPA Reg. No. 70051-12
52. Each failure to follow the WPS requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA § 12(a)(2)(G).
53. Each failure to follow other label requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA § 12(a)(2)(G).

**COUNTS 1 - 151:  
FAILURE TO NOTIFY WORKERS OF PESTICIDE APPLICATIONS**

54. Paragraphs 1- 53 are incorporated herein by reference.
55. On April 26, 2004, during an inspection of Respondent's Jauca facility, the PRDA-EPA inspector compared Respondent's pesticide application records with the WPS posting hanging in the central posting area for workers and observed that no applications of the herbicide ClearOut 41 Plus were included in the WPS posting as required by 40 C.F.R. § 170.122. Respondent's agronomist, Mr. Alvaro Acosta, acknowledged that this was true and stated that it was Respondent's practice not to include herbicide applications on its WPS postings.
56. Between March 29, 2004, and April 26, 2004, according to Respondent's own WPS records, Respondent's handlers applied the herbicide ClearOut 41 Plus to fruit fields at its Jauca facility a total of 151 times, as set forth below:



Application #	Date of Application	Field Name / Crop
1	March 29, 2004	MJF-04G / Guineo (Banana)*
2	March 29, 2004	TX-52G / Guineo (Banana)*
3	March 29, 2004	MJF-04G / Guineo (Banana)*
4	March 29, 2004	MJF-04G / Guineo (Banana)*
5	March 29, 2004	TX-52G / Guineo (Banana)*
6	March 29, 2004	TX-41 / Mango (Mango)
7	March 29, 2004	TX-31 / Mango (Mango)
8	March 29, 2004	TX-32 / Mango (Mango)
9	March 29, 2004	TX-52G / Guineo (Banana)*
10	March 30, 2004	ON-41P / Palmas (Palm)*
11	March 30, 2004	JC-41 / Mango (Mango)
12	March 30, 2004	ON-41P / Palmas (Palm)*
13	March 30, 2004	JC-42 / Mango (Mango)
14	March 30, 2004	ON-41P / Palmas (Palm)*
15	March 31, 2004	JC-22 / Mango (Mango)
16	March 31, 2004	D501 / Mango (Mango)
17	March 31, 2004	JC-11 / Mango (Mango)
18	March 31, 2004	ON-42P / Palmas (Palm)*
19	March 31, 2004	ON-42P / Palmas (Palm)*
20	March 31, 2004	ON-43P / Palmas (Palm)*
21	March 31, 2004	ON-43P / Palmas (Palm)*
22	March 31, 2004	D601 / Mango (Mango)
23	March 31, 2004	JC-21 / Mango (Mango)

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\*Applications marked with an asterisk denote separate applications of a pesticide to the same field on the same day by *different handlers*.



<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
24	April 1, 2004	D701 / Mango (Mango)
25	April 1, 2004	JC-12P / Palmas (Palm)*
26	April 1, 2004	D601 / Mango (Mango)
27	April 1, 2004	JC-12P / Palmas (Palm)*
28	April 1, 2004	JC-12P / Palmas (Palm)*
29	April 1, 2004	JC-23 / Mango (Mango)
30	April 1, 2004	JC-31 / Mango (Mango)
31	April 2, 2004	Invernader (Nursery) / Ornamental *
32	April 2, 2004	Invernader (Nursery) / Ornamental *
33	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
34	April 2, 2004	JC-11 / Mango (Mango)
35	April 2, 2004	Invernader (Nursery) / Ornamental *
36	April 2, 2004	TX-54G / Guineo (Banana) *
37	April 2, 2004	TX-54G / Guineo (Banana) *
38	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
39	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
40	April 2, 2004	JC-32 / Mango (Mango)
41	April 2, 2004	D401 / Mango (Mango)
42	April 2, 2004	TX-54G / Guineo (Banana) *
43	April 5, 2004	DSPR / Mango (Mango)
44	April 5, 2004	TX-22 / Mango (Mango)
45	April 5, 2004	TX-32 / Mango (Mango)
46	April 5, 2004	TX-06P / Palmas (Palm)*
47	April 5, 2004	TX-06P / Palmas (Palm)*
48	April 5, 2004	JC-06P / Palmas (Palm)*

<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
49	April 5, 2004	TX-06P/ Palmas (Palm)*
50	April 5, 2004	JC-07P / Palmas (Palm)*
51	April 5, 2004	JC-07P / Palmas (Palm)*
52	April 5, 2004	JC-07P / Palmas (Palm)*
53	April 5, 2004	JC-06P / Palmas (Palm)*
54	April 5, 2004	JC-06P / Palmas (Palm)*
55	April 6, 2004	MJF-07P / Palmas (Palm)*
56	April 6, 2004	MJF-07P / Palmas (Palm)*
57	April 6, 2004	MJF-07P / Palmas (Palm)*
58	April 6, 2004	ON-11A / Aguacate (Avocado)*
59	April 6, 2004	TX-41 / Mango (Mango)
60	April 6, 2004	ON-12C / Citricos (Citrus)
61	April 6, 2004	DSPR / Mango (Mango)
62	April 6, 2004	Taller (Workshop) / Crop Not Listed*
63	April 6, 2004	Taller (Workshop) / Crop Not Listed*
64	April 6, 2004	Taller (Workshop) / Crop Not Listed*
65	April 7, 2004	R010 / Mango (Mango)
66	April 7, 2004	D106 / Mango (Mango)
67	April 7, 2004	DSPI / Mango (Mango)*
68	April 7, 2004	ON-71A / Aguacate (Avocado)
69	April 7, 2004	ON-06A / Aguacate (Avocado)
70	April 7, 2004	OS-33H / Hawaiano (Plantains)*
71	April 7, 2004	TX-53G / Guineo (Banana)
72	April 7, 2004	OS-17P / Palmas (Palm)*
73	April 7, 2004	OS -17P / Palmas (Palm)*



<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
74	April 7, 2004	ON-72A / Aguacate (Avocado)
75	April 7, 2004	OS-33H / Hawaiano (Plantains)*
76	April 7, 2004	ON-82AP / Aguacate (Avocado)
77	April 7, 2004	TX-53G / Guineo (Banana) *
78	April 7, 2004	R013 / Mango (Mango)
79	April 7, 2004	R011 / Mango (Mango)
80	April 7, 2004	DSPR / Mango (Mango)*
81	April 8, 2004	DSPR / Mango (Mango)
82	April 12, 2004	ON-82AP / Aguacate (Avocado)
83	April 12, 2004	ON-21A / Aguacate (Avocado)
84	April 12, 2004	ON-32A / Aguacate (Avocado)
85	April 12, 2004	DSPR / Mango (Mango)
86	April 13, 2004	ON-21A / Aguacate (Avocado)
87	April 13, 2004	ON-31A / Aguacate (Avocado)
88	April 13, 2004	ON-22A / Aguacate (Avocado)
89	April 13, 2004	D001 / Mango (Mango)
90	April 13, 2004	MJF-09P / Palmas (Palm)*
91	April 13, 2004	MJF-09P / Palmas (Palm)*
92	April 13, 2004	MJF-09P / Palmas (Palm)*
93	April 14, 2004	D001 / Mango (Mango)
94	April 14, 2004	MJF-09P / Palmas (Palm)*
95	April 14, 2004	OS-25H / Hawaiano (Plantains)*
96	April 14, 2004	OS-25H / Hawaiano (Plantains)*
97	April 14, 2004	MJF-09P / Palmas (Palm)*
98	April 14, 2004	R401 / Mango (Mango)

<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
99	April 14, 2004	OE-22G / Guineo (Banana)*
100	April 14, 2004	OE-22G / Guineo (Banana)*
101	April 14, 2004	MJF-09P / Palmas (Palm)*
102	April 14, 2004	OE-22G / Guineo (Banana)*
103	April 15, 2004	OE-22G / Guineo (Banana)*
104	April 15, 2004	OE-22G / Guineo (Banana)*
105	April 15, 2004	Verjas (Fenceline) / Crop Not Listed*
106	April 15, 2004	Verjas (Fenceline) / Crop Not Listed*
107	April 15, 2004	OE-22G / Guineo (Banana)*
108	April 15, 2004	D201 / Mango (Mango)
109	April 15, 2004	R403 / Mango (Mango)
110	April 15, 2004	Verjas (Fenceline)/ Crop Not Listed
111	April 16, 2004	OE-21G / Guineo (Banana)*
112	April 16, 2004	MJF-04G / Guineo (Banana)*
113	April 16, 2004	OE-21G / Guineo (Banana)*
114	April 16, 2004	MJF-04G / Guineo (Banana)*
115	April 16, 2004	OE-21G / Guineo (Banana)*
116	April 16, 2004	MJF-04G / Guineo (Banana)*
117	April 16, 2004	R405 / Mango (Mango)
118	April 19, 2004	R108 / Mango (Mango)
119	April 19, 2004	ON-09A / Aguacate (Avocado)
120	April 19, 2004	MJF-03G / Guineo (Banana)*
121	April 19, 2004	D401 / Mango (Mango)
122	April 19, 2004	MJF-03G / Guineo (Banana)*
123	April 19, 2004	MJF-03G / Guineo (Banana)*



<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
124	April 19, 2004	ON-09A / Aguacate (Avocado)*
125	April 20, 2004	D601 / Mango (Mango)
126	April 20, 2004	R104 / Mango (Mango)
127	April 20, 2004	ON-41P / Palmas (Palm)*
128	April 20, 2004	MJF-03G / Guineo (Banana)*
129	April 20, 2004	ON-41P / Palmas (Palm)*
130	April 20, 2004	ON-41P / Palmas (Palm)*
131	April 20, 2004	MJF-03G / Guineo (Banana)*
132	April 21, 2004	D601 / Mango (Mango)
133	April 21, 2004	ON-41P / Palmas (Palm)*
134	April 21, 2004	R104 / Mango (Mango)
135	April 21, 2004	ON-41P / Palmas (Palm)*
136	April 22, 2004	ON-42P / Palmas (Palm)*
137	April 22, 2004	JC-07P / Palmas (Palm)*
138	April 22, 2004	JC-07P / Palmas (Palm)*
139	April 22, 2004	ON-42P / Palmas (Palm)*
140	April 22, 2004	D501 / Mango (Mango)
141	April 22, 2004	R101 / Mango (Mango)
142	April 22, 2004	ON-42P / Palmas (Palm)*
143	April 22, 2004	JC-07P / Palmas (Palm)*
144	April 23, 2004	MJF-01G / Guineo (Banana)*
145	April 23, 2004	TX-54G / Guineo (Banana)*
146	April 23, 2004	TX-54G / Guineo (Banana)*
147	April 23, 2004	MJF-01G / Guineo (Banana)*
148	April 23, 2004	MJF-01G / Guineo (Banana)*

Application #	Date of Application	Field Name / Crop
149	April 23, 2004	TX-54G / Guineo (Banana)*
150	April 26, 2004	OS-11 / Mango (Mango)
151	April 26, 2004	ON-52CLT / Citricos (Citrus)

57. The ClearOut Plus 41 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170."
58. On April 26, 2004, Respondent was not displaying specific information to notify workers of pesticide applications, as required by 40 C.F.R. § 170.122, regarding the March 29 - April 26, 2004 applications of Clear Out 41 Plus to the fruit fields at the Jauca facility, as listed in paragraph 56.
59. Since Respondent failed to display specific information about the one-hundred fifty-one (151) applications of the pesticide Clear Out 41 Plus on the Jauca facility fruit fields from March 29 - April 26, 2004, as listed in paragraph 56, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are one hundred fifty-one (151) violations of FIFRA § 12(a)(2)(G) (Counts 1-151).

**COUNTS 152-153:**  
**FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO WORKERS**

60. Paragraphs 1- 53 are incorporated herein by reference.
61. On April 21, 2004, Respondent applied a pesticide called "Kocide 101" to the JC-11 mango field at its Jauca facility.
62. The Kocide 101 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
63. The JC-11 mango field is approximately 0.6 miles from the central posting facility and main decontamination area of Respondent's Jauca facility.
64. During the April 26, 2004 inspection, the PRDA-EPA inspector observed approximately twenty (20) workers picking mangoes in the JC-11 field. The inspector also observed that there were no decontamination supplies, including water, soap, or single use towels, available to the workers within 1/4 mile of the JC-11 field, as required by 40 C.F.R. §§ 170.150(b) and (c).



65. Since Respondent failed to provide required decontamination supplies within 1/4 mile of its workers in the JC-11 mango field on April 26, 2004, this failure to comply with the WPS requirements constitutes the use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA § 12(a)(2)(G) (Count 152).
66. The Kocide 101 label indicates that its active ingredient is copper hydroxide and also states: "The following equipment and precautions must be followed for 7 days following the application of this product: – An eye-flush container, designed specifically for flushing eyes, must be available at the WPS decontamination site for workers entering the area treated with copper hydroxide."
67. The PRDA-EPA inspector observed that there was no eye-flush container designed specifically for flushing eyes available to workers in the JC-11 mango field on April 26, 2004, as required by section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136(j)(a)(2)(G), which requires use of any registered pesticide in a manner consistent with its labeling.
68. Since Respondent failed to follow the specific labeling requirements of Kocide 101, this failure to comply with the specific labeling requirement constitutes the use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA § 12(a)(2)(G) (Count 153).

#### **COUNTS 154-304:**

##### **FAILURE TO NOTIFY HANDLERS OF PESTICIDE APPLICATIONS**

69. Paragraphs 1- 53 are incorporated herein by reference.
70. On April 26, 2004, during an inspection of Respondent's Jauca facility, the PRDA-EPA inspector compared Respondent's pesticide application records with the WPS posting hanging in the central posting area for handlers and noticed that no applications of the herbicide ClearOut 41 Plus were included in the WPS posting as required by 40 C.F.R. § 170.222. Respondent's agronomist, Mr. Alvaro Acosta, acknowledged that this was true and stated that it was Respondent's practice not to include herbicide applications on its WPS postings.
71. Between March 29, 2004, and April 26, 2004, according to Respondent's own WPS records, Respondent's handlers applied the herbicide ClearOut 41 Plus to fruit fields at its Jauca facility a total of one hundred fifty-one (151) times, as set forth below:

Application #	Date of Application	Field Name / Crop
1	March 29, 2004	MJF-04G / Guineo (Banana)**
2	March 29, 2004	TX-52G / Guineo (Banana)*
3	March 29, 2004	MJF-04G / Guineo (Banana)*
4	March 29, 2004	MJF-04G / Guineo (Banana)*
5	March 29, 2004	TX-52G / Guineo (Banana)*
6	March 29, 2004	TX-41 / Mango (Mango)
7	March 29, 2004	TX-31 / Mango (Mango)
8	March 29, 2004	TX-32 / Mango (Mango)
9	March 29, 2004	TX-52G / Guineo (Banana)*
10	March 30, 2004	ON-41P / Palmas (Palm)*
11	March 30, 2004	JC-41 / Mango (Mango)
12	March 30, 2004	ON-41P / Palmas (Palm)*
13	March 30, 2004	JC-42 / Mango (Mango)
14	March 30, 2004	ON-41P / Palmas (Palm)*
15	March 31, 2004	JC-22 / Mango (Mango)
16	March 31, 2004	D501 / Mango (Mango)
17	March 31, 2004	JC-11 / Mango (Mango)
18	March 31, 2004	ON-42P / Palmas (Palm)*
19	March 31, 2004	ON-42P / Palmas (Palm)*
20	March 31, 2004	ON-43P / Palmas (Palm)*
21	March 31, 2004	ON-43P / Palmas (Palm)*
22	March 31, 2004	D601 / Mango (Mango)
23	March 31, 2004	JC-21 / Mango (Mango)

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\*\*Applications marked with an asterisk denote separate applications of a pesticide to the same field on the same day by *different handlers*.



Application #	Date of Application	Field Name / Crop
24	April 1, 2004	D701 / Mango (Mango)
25	April 1, 2004	JC-12P / Palmas (Palm)*
26	April 1, 2004	D601 / Mango (Mango)
27	April 1, 2004	JC-12P / Palmas (Palm)*
28	April 1, 2004	JC-12P / Palmas (Palm)*
29	April 1, 2004	JC-23 / Mango (Mango)
30	April 1, 2004	JC-31 / Mango (Mango)
31	April 2, 2004	Invernader (Nursery) / Ornamental *
32	April 2, 2004	Invernader (Nursery) / Ornamental *
33	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
34	April 2, 2004	JC-11 / Mango (Mango)
35	April 2, 2004	Invernader (Nursery) / Ornamental *
36	April 2, 2004	TX-54G / Guineo (Banana) *
37	April 2, 2004	TX-54G / Guineo (Banana) *
38	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
39	April 2, 2004	Verjas (Fenceline) / Crop Not Listed*
40	April 2, 2004	JC-32 / Mango (Mango)
41	April 2, 2004	D401 / Mango (Mango)
42	April 2, 2004	TX-54G / Guineo (Banana) *
43	April 5, 2004	DSPR / Mango (Mango)
44	April 5, 2004	TX-22 / Mango (Mango)
45	April 5, 2004	TX-32 / Mango (Mango)
46	April 5, 2004	TX-06P / Palmas (Palm)*
47	April 5, 2004	TX-06P / Palmas (Palm)*
48	April 5, 2004	JC-06P / Palmas (Palm)*

<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
49	April 5, 2004	TX-06P/ Palmas (Palm)*
50	April 5, 2004	JC-07P / Palmas (Palm)*
51	April 5, 2004	JC-07P / Palmas (Palm)*
52	April 5, 2004	JC-07P / Palmas (Palm)*
53	April 5, 2004	JC-06P / Palmas (Palm)*
54	April 5, 2004	JC-06P / Palmas (Palm)*
55	April 6, 2004	MJF-07P / Palmas (Palm)*
56	April 6, 2004	MJF-07P / Palmas (Palm)*
57	April 6, 2004	MJF-07P / Palmas (Palm)*
58	April 6, 2004	ON-11A / Aguacate (Avocado)*
59	April 6, 2004	TX-41 / Mango (Mango)
60	April 6, 2004	ON-12C / Citricos (Citrus)
61	April 6, 2004	DSPR / Mango (Mango)
62	April 6, 2004	Taller (Workshop) / Crop Not Listed*
63	April 6, 2004	Taller (Workshop) / Crop Not Listed*
64	April 6, 2004	Taller (Workshop) / Crop Not Listed*
65	April 7, 2004	R010 / Mango (Mango)
66	April 7, 2004	D106 / Mango (Mango)
67	April 7, 2004	DSPI / Mango (Mango)*
68	April 7, 2004	ON-71A / Aguacate (Avocado)
69	April 7, 2004	ON-06A / Aguacate (Avocado)
70	April 7, 2004	OS-33H / Hawaiano (Plantains)*
71	April 7, 2004	TX-53G / Guineo (Banana)
72	April 7, 2004	OS-17P / Palmas (Palm)*
73	April 7, 2004	OS -17P / Palmas (Palm)*



<b>Application #</b>	<b>Date of Application</b>	<b>Field Name / Crop</b>
74	April 7, 2004	ON-72A / Aguacate (Avocado)
75	April 7, 2004	OS-33H / Hawaiiano (Plantains)*
76	April 7, 2004	ON-82AP / Aguacate (Avocado)
77	April 7, 2004	TX-53G / Guineo (Banana) *
78	April 7, 2004	R013 / Mango (Mango)
79	April 7, 2004	R011 / Mango (Mango)
80	April 7, 2004	DSPR / Mango (Mango)*
81	April 8, 2004	DSPR / Mango (Mango)
82	April 12, 2004	ON-82AP / Aguacate (Avocado)
83	April 12, 2004	ON-21A / Aguacate (Avocado)
84	April 12, 2004	ON-32A / Aguacate (Avocado)
85	April 12, 2004	DSPR / Mango (Mango)
86	April 13, 2004	ON-21A / Aguacate (Avocado)
87	April 13, 2004	ON-31A / Aguacate (Avocado)
88	April 13, 2004	ON-22A / Aguacate (Avocado)
89	April 13, 2004	D001 / Mango (Mango)
90	April 13, 2004	MJF-09P / Palmas (Palm)*
91	April 13, 2004	MJF-09P / Palmas (Palm)*
92	April 13, 2004	MJF-09P / Palmas (Palm)*
93	April 14, 2004	D001 / Mango (Mango)
94	April 14, 2004	MJF-09P / Palmas (Palm)*
95	April 14, 2004	OS-25H / Hawaiiano (Plantains)*
96	April 14, 2004	OS-25H / Hawaiiano (Plantains)*
97	April 14, 2004	MJF-09P / Palmas (Palm)*
98	April 14, 2004	R401 / Mango (Mango)

Application #	Date of Application	Field Name / Crop
99	April 14, 2004	OE-22G / Guineo (Banana)*
100	April 14, 2004	OE-22G / Guineo (Banana)*
101	April 14, 2004	MJF-09P / Palmas (Palm)*
102	April 14, 2004	OE-22G / Guineo (Banana)*
103	April 15, 2004	OE-22G / Guineo (Banana)*
104	April 15, 2004	OE-22G / Guineo (Banana)*
105	April 15, 2004	Verjas (Fenceline) / Crop Not Listed*
106	April 15, 2004	Verjas (Fenceline) / Crop Not Listed*
107	April 15, 2004	OE-22G / Guineo (Banana)*
108	April 15, 2004	D201 / Mango (Mango)
109	April 15, 2004	R403 / Mango (Mango)
110	April 15, 2004	Verjas (Fenceline)/ Crop Not Listed
111	April 16, 2004	OE-21G / Guineo (Banana)*
112	April 16, 2004	MJF-04G / Guineo (Banana)*
113	April 16, 2004	OE-21G / Guineo (Banana)*
114	April 16, 2004	MJF-04G / Guineo (Banana)*
115	April 16, 2004	OE-21G / Guineo (Banana)*
116	April 16, 2004	MJF-04G / Guineo (Banana)*
117	April 16, 2004	R405 / Mango (Mango)
118	April 19, 2004	R108 / Mango (Mango)
119	April 19, 2004	ON-09A / Aguacate (Avocado)
120	April 19, 2004	MJF-03G / Guineo (Banana)*
121	April 19, 2004	D401 / Mango (Mango)
122	April 19, 2004	MJF-03G / Guineo (Banana)*
123	April 19, 2004	MJF-03G / Guineo (Banana)*



Application #	Date of Application	Field Name / Crop
124 237	April 19, 2004	ON-09A / Aguacate (Avocado)*
125 238	April 20, 2004	D601 / Mango (Mango)
126 244	April 20, 2004	R104 / Mango (Mango)
127 230	April 20, 2004	ON-41P / Palmas (Palm)*
128 231	April 20, 2004	MJF-03G / Guineo (Banana)*
129 232	April 20, 2004	ON-41P / Palmas (Palm)*
130 233	April 20, 2004	ON-41P / Palmas (Palm)*
131 234	April 20, 2004	MJF-03G / Guineo (Banana)*
132 235	April 21, 2004	D601 / Mango (Mango)
133 236	April 21, 2004	ON-41P / Palmas (Palm)*
134 237	April 21, 2004	R104 / Mango (Mango)
135 238	April 21, 2004	ON-41P / Palmas (Palm)*
136 239	April 22, 2004	ON-42P / Palmas (Palm)*
137 240	April 22, 2004	JC-07P / Palmas (Palm)*
138 241	April 22, 2004	JC-07P / Palmas (Palm)*
139 242	April 22, 2004	ON-42P / Palmas (Palm)*
140 243	April 22, 2004	D501 / Mango (Mango)
141 244	April 22, 2004	R101 / Mango (Mango)
142 245	April 22, 2004	ON-42P / Palmas (Palm)*
143 246	April 22, 2004	JC-07P / Palmas (Palm)*
144 247	April 23, 2004	MJF-01G / Guineo (Banana)*
145 248	April 23, 2004	TX-54G / Guineo (Banana)*
146 249	April 23, 2004	TX-54G / Guineo (Banana)*
147 300	April 23, 2004	MJF-01G / Guineo (Banana)*
148 301	April 23, 2004	MJF-01G / Guineo (Banana)*

Application #	Date of Application	Field Name / Crop
149 <i>302</i>	April 23, 2004	TX-54G / Guineo (Banana)*
150 <i>303</i>	April 26, 2004	OS-11 / Mango (Mango)
151 <i>304</i>	April 26, 2004	ON-52CLT / Citricos (Citrus)

72. The ClearOut Plus 41 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
73. On April 26, 2004, Respondent was not displaying specific information to notify handlers of pesticide applications, as required by 40 C.F.R. § 170.222, regarding the March 29 - April 26, 2004 applications of Clear Out 41 Plus to the fruit fields at the Jauca facility as set forth in paragraph 71.
74. Since Respondent failed to display specific information about the one hundred fifty-one (151) applications of the pesticide Clear Out 41 Plus on the Jauca facility fruit fields from March 29 - April 26, 2004, as listed in paragraph 71, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are one hundred fifty-one violations of FIFRA § 12(a)(2)(G) (Counts 154-304).

**COUNTS 305 - 321:**  
**FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS**

75. Paragraphs 1-53 are incorporated herein by reference.
76. During the April 26, 2004 inspection of Respondent's Jauca facility, Respondent's decontamination facility for handlers was inspected and the inspector noted an absence of single-use towels which are required decontamination supplies under 40 C.F.R. § 170.250(b).
77. During further inspection on April 26, 2004, the inspector also visited the Jauca facility's mixing site and was told that decontamination supplies were in a box that was locked with a key. When the box was unlocked, the inspector found a measuring cup with pesticide residues atop a pair of overalls and a glove. The inspector also found a first aid box that had no eyewash.
78. The WPS requires that decontamination supplies for handlers be located together and be reasonably accessible to and not more than 1/4 mile from each handler during the handling activity. For mixing activities, such decontamination supplies shall be at the mixing site. 40 C.F.R. § 170.250(c).



79. The mixing site and the decontamination facility for handlers are more than 1/4 mile from the OS-11, OS-12, OS-15, OS-16, ON-52CLT, OE-11G, OE-21G, JC-31, TX-21, and TX-22 fields at Respondent's Jauca facility.
80. On April 26, 2004, there were no single-use towels at the central decontamination area and no decontamination supplies at the mixing site at Respondent's Jauca facility.
81. On April 26, 2004, Respondent's handlers applied the following pesticides to mango, citrus, and banana fields at its Jauca facility, as set forth below:

Application #	Name of Pesticide	Field Name/Crop
1	ClearOut 41 Plus	OS-11 / Mango (Mango)
2	ClearOut 41 Plus	ON-52CLT / Citricos (Citrus)
3	Kocide 101	JC-31 / Mango (Mango)
4	Kocide 101	JC-32 / Mango (Mango)
5	Kocide 101	OS-11 / Mango (Mango)
6	Kocide 101	OS-12 / Mango (Mango)
7	Kocide 101	TX-21 / Mango (Mango)
8	Kocide 101	TX-22 / Mango (Mango)
9	Kocide 101	OS-15 / Mango (Mango)
10	Kocide 101	OS-16 / Mango (Mango)
11	Boa	OE-11G / Guineo (Banana)*
12	Boa	OE-11G / Guineo (Banana)*
13	Boa	OE-11G / Guineo (Banana)*
14	Trilogy 90EC	TX-52G / Guineo (Banana)
15	Trilogy 90EC	TX-54G / Guineo (Banana)
16	Trilogy 90EC	OE-21G / Guineo (Banana)
17	Trilogy 90EC	OE-22G / Guineo (Banana)

82. The ClearOut Plus 41 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170."
83. On April 26, 2004, Respondent did not provide its handlers with adequate decontamination supplies, as required by 40 C.F.R. § 170.250(b), nor did Respondent provide decontamination supplies at the mixing site or within 1/4 mile of the handling activities, as required by 40 C.F.R. § 170.250(c), for the two (2) April 26<sup>th</sup> applications of ClearOut 41 Plus to the fruit fields at the Jauca facility, as listed in paragraph 81.
84. Since Respondent failed to provide its handlers with decontamination supplies as required by 40 C.F.R. §§ 170.250(b) and (c) for the two (2) April 26<sup>th</sup> applications of the pesticide ClearOut 41 Plus to the Jauca facility fields, as listed in paragraph 81, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are two (2) violations of FIFRA § 12(a)(2)(G) (Counts 305 - 306).
85. The Kocide 101 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
86. On April 26, 2004, Respondent did not provide its handlers with adequate decontamination supplies, as required by 40 C.F.R. § 170.250(b), nor did Respondent provide decontamination supplies at the mixing site or within 1/4 mile of the handling activities at the JC-31, OS-11, OS-12, OS-15, OS-16, TX-21, and TX-22 fields, as required by 40 C.F.R. § 170.250(c), for the eight (8) April 26<sup>th</sup> applications of Kocide 101 to the mango fields at the Jauca facility, as listed in paragraph 81.
87. Since Respondent failed to provide its handlers with decontamination supplies as required by 40 C.F.R. §§ 170.250(b) and (c) for the eight (8) April 26<sup>th</sup> applications of the pesticide Kocide 101 on the Jauca facility mango fields, as listed in paragraph 81, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are eight (8) violations of FIFRA § 12(a)(2)(G) (Counts 307-314).
88. The Boa label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
89. On April 26, 2004, Respondent did not provide its handlers with adequate decontamination supplies, as required by 40 C.F.R. § 170.250(b), nor did Respondent provide decontamination supplies at the mixing site or within 1/4 mile of the handling



activities, as required by 40 C.F.R. § 170.250(c), for the three (3) April 26<sup>th</sup> applications of Boa herbicide at the Jauca facility banana fields, as listed in paragraph 81.

90. Since Respondent failed to provide its handlers with decontamination supplies as required by 40 C.F.R. §§ 170.250(b) and (c) for the three (3) April 26<sup>th</sup> applications of the herbicide Boa to the Jauca facility banana fields, as listed in paragraph 81, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are three (3) violations of FIFRA § 12(a)(2)(G) (Counts 315-317).
91. The Trilogy 90EC label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
92. On April 26, 2004, Respondent did not provide its handlers with adequate decontamination supplies, as required by 40 C.F.R. § 170.250(b), nor did Respondent provide decontamination supplies at the mixing site or within 1/4 mile of the handling activities at the OE-21G field, as required by 40 C.F.R. § 170.250(c), for the four (4) April 26<sup>th</sup> applications of Trilogy 90EC to the Jauca facility banana fields, as listed in paragraph 81.
93. Since Respondent failed to provide its handlers with decontamination supplies as required by 40 C.F.R. §§ 170.250(b) and (c) for the April 26<sup>th</sup> applications of Trilogy 90EC at the Jauca facility banana fields, as listed in paragraph 81, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are four (4) violations of FIFRA § 12(a)(2)(G) (Counts 318-321).

#### **COUNTS 322-334:**

#### **FAILURE TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT TO HANDLERS**

94. Paragraphs 1-53 are incorporated herein by reference.
95. During the April 26, 2004 inspection of Respondent's Jauca facility, the inspector asked to see personal protective equipment ("PPE") available to and used by handlers for pesticide applications. He was initially directed to a locked box, which he was told contained PPE for one of the handlers, but for which Mr. Acosta, Respondent's field agronomist, had no key. In the mixing facility, the inspector found a measuring cup with pesticide residues on top of waterproof gloves and overalls, and a first-aid box which had no eye-wash. Despite his specific request to see handler PPE, at no time during the April 26, 2004 inspection was the inspector shown PPE, including protective eyewear or respirator masks. At no time during the inspection was the inspector shown an area where PPE could be stored separately from clean clothes, an area where handlers could store personal clothing when not in use, or facilities where PPE could be cleaned.



96. On July 20, 2004, the inspector returned to Respondent's Jauca site and was able to see the contents of the locked box which he had been told during the April 26, 2004 inspection contained PPE. When the box was opened, the inspector found a spraying hose and equipment, but no PPE.
97. On April 26, 2004, Respondent's handlers applied the following pesticides to mango, citrus, and banana fields at its Jauca facility, as set forth below:

Application #	Name of Pesticide	Field Name/Crop
1	ClearOut 41 Plus	OS-11 / Mango (Mango)
2	ClearOut 41 Plus	ON-52CLT / Citricos (Citrus)
3	Kocide 101	JC-31 / Mango (Mango)
4	Kocide 101	JC-32 / Mango (Mango)
5	Kocide 101	OS-11 / Mango (Mango)
6	Kocide 101	OS-12 / Mango (Mango)
7	Kocide 101	TX-21 / Mango (Mango)
8	Kocide 101	TX-22 / Mango (Mango)
9	Kocide 101	OS-15 / Mango (Mango)
10	Kocide 101	OS-16 / Mango (Mango)
11	Boa	OE-11G / Guineo (Banana)***
12	Boa	OE-11G / Guineo (Banana)*
13	Boa	OE-11G / Guineo (Banana)*

98. The ClearOut 41 Plus label states that applicators and other handlers must wear the following PPE: long-sleeved shirt and pants, shoes plus socks, chemical-resistant gloves, and protective eyewear.
99. On April 26, 2004, Respondent did not provide its handlers with the appropriate PPE, nor was there a place for storing PPE or clean clothes, as required by 40 C.F.R. § 170.240, for the two (2) April 26, 2004 applications of Clear Out 41 Plus, as listed in paragraph 97.

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\*\*\*Applications marked with an asterisk denote separate applications of a pesticide to the same field on the same day by *different handlers*.

100. Since Respondent failed to provide its handlers with appropriate PPE and failed to assure that there was a place to store PPE or clean clothing for the two (2) April 26, 2004 applications of the pesticide ClearOut 41 Plus on the Jauca facility, as listed in paragraph 97, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are two (2) violations of FIFRA § 12(a)(2)(G) (Counts 322-323).
101. The Kocide 101 label states that applicators and handlers must wear the following PPE: long-sleeved shirt and long pants; chemical-resistant gloves made of any waterproof material, such as polyvinyl chloride, nitrile rubber, or butyl rubber; shoes plus socks; and protective eyewear.
102. On April 26, 2004, Respondent did not provide its handlers with the appropriate PPE, nor was there a place for storing PPE or clean clothes, as required by 40 C.F.R. § 170.240, for the eight (8) April 26<sup>th</sup> applications of Kocide 101, as listed in paragraph 97.
103. Since Respondent failed to provide its handlers with appropriate PPE and failed to assure that there was a place to store PPE or clean clothing for the eight (8) April 26<sup>th</sup> applications of the pesticide Kocide 101 on the mango fields, as listed in paragraph 97, this failure to comply with the WPS requirements constitutes the use of a registered pesticide in a manner inconsistent with its labeling. These are eight (8) violations of FIFRA § 12(a)(2)(G) (Counts 324 - 331).
104. The Boa label states that applicators and handlers must wear the following PPE: long-sleeved shirt and long pants; shoes plus socks; chemical resistant gloves; protective eyewear, and a dust/mist National Institute of Occupational Safety and Health-approved respirator with any N, R, P, or HE filter. The label also requires that those mixing and/or loading Boa must wear a face shield and chemical-resistant apron in addition to the above-mentioned PPE.
105. On April 26, 2004, Respondent did not provide its handlers with the appropriate PPE, nor was there a place for storing PPE or clean clothes, as required by 40 C.F.R. § 170.240, for the three April 26<sup>th</sup> applications of Boa herbicide to the OE-11G banana field, as listed in paragraph 97.
106. Since Respondent failed to provide its handlers with appropriate PPE and failed to assure that there was a place to store PPE or clean clothing for the three April 26<sup>th</sup> applications of the herbicide Boa on the OE-11G banana field, as listed in paragraph 97, these failures to comply with the WPS requirements constitute the use of a registered pesticide in a manner inconsistent with its labeling. These are three violations of FIFRA § 12(a)(2)(G) (Counts 332 - 334).

**COUNT 335 - 336:**  
**FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS**

107. Paragraphs 1-53 are incorporated herein by reference.
108. On April 26, 2004, during an inspection of Respondent's Coto Laurel facility, the PRDA-EPA inspector examined the decontamination supplies available to Respondent's handler for the Coto Laurel facility. The inspector found that there were no showers at the facility where handlers could bathe after pesticide applications.
109. On April 20, 2004, Respondent's handler applied the pesticide Kocide 101 to a mango field at its Coto Laurel facility known as "C001."
110. On April 21, 2004, Respondent's handler made another application of Kocide 101 to the C001 mango field at the Coto Laurel facility.
111. The Kocide 101 label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard at 40 CFR Part 170."
112. Respondent did not provide enough water for routine washing, for emergency eyeflushing, and for washing the entire body, as required by 40 C.F.R. §§ 170.250(b) and (c), for the April 20<sup>th</sup> and April 21<sup>st</sup> applications of Kocide 101 to the Coto Laurel facility's C001 mango field.
113. Since Respondent failed to provide enough water for routine washing, for emergency eyeflushing, and for washing the entire body for its handlers for the April 20<sup>th</sup> and April 21<sup>st</sup>, 2004 applications of the pesticide Kocide 101 on the C001 mango field, this failure to comply with the WPS requirements constitutes the use of a registered pesticide in a manner inconsistent with its labeling. These are two (2) violations of FIFRA § 12(a)(2)(G) (Counts 335 - 336).



### **III. CIVIL PENALTIES**

114. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$1,000.00 (one thousand dollars) for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, *see* 69 Fed. Reg. 7121 (February 13, 2004), this amount was increased to \$1,200. This amount is being revised to \$1,100. *See* Memorandum from Ann Pontius, Director of Toxics and Pesticides Enforcement Division, "Interim Correction of Penalty Amounts Under FIFRA § 14(a)(2), dated August 30, 2005. Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent's business, and Respondent's ability to continue in business in light of the proposed penalty, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

<b>Counts 1 - 151:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to notify workers of pesticide applications).....	\$166,100
<b>Counts 152 - 153:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to provide workers with appropriate decontamination supplies).....	\$2,200
<b>Counts 154-304:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to notify handlers of pesticide applications).....	\$166,100
<b>Counts 305 - 321:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to provide handlers with adequate decontamination supplies).....	\$18,700
<b>Counts 322 - 334:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to provide adequate PPE to handlers).....	\$14,300
<b>Counts 335-336:</b> Use of registered pesticides in a manner inconsistent with labeling (Failure to provide handler with adequate decontamination supplies).....	\$2,200
<b>Total Proposed Civil Penalty.....</b>	<b>\$369,600</b>

115. Complainant derived the proposed penalty by applying the factors enumerated in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), to the violations alleged in this Complaint. The reasoning for the assessment is explained in detail in the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), July 2, 1990," a copy of which accompanies this Complaint.

116. Respondent may pay this penalty of \$369,600 by certified or cashier's check payable to the "Treasurer of the United States of America," and remit the check to:

U.S. Environmental Protection Agency  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

117. A copy of the check shall also be sent to:

U.S. Environmental Protection Agency  
Office of the Hearing Clerk  
Mail Code 1900  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

A transmittal letter identifying the name and docket number of the Complaint should accompany both the remittance and the copies of the check.

#### **IV. OPPORTUNITY TO REQUEST A HEARING**

118. Respondent has the right to request a hearing to contest any matter of law or material fact alleged in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file, within thirty (30) days of receipt of this Complaint, a written Answer to the Complaint with:

U.S. Environmental Protection Agency  
Office of the Hearing Clerk  
Mail Code 1900  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

Please send an additional copy of the Answer and any other documents filed in this action to the attorney assigned to represent EPA in this matter:

Danielle Fidler  
Special Litigation and Projects Division  
Office of Regulatory Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW (MC-2248A)  
Washington, DC 20460



119. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. The Answer must state: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. Failure of Respondent to admit, deny, or explain any material factual allegation contained in this Complaint shall constitute an admission of the allegation.
120. **If Respondent fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein without further proceedings.**
121. If the Presiding Officer schedules a hearing in this matter, the date and location will be determined at a later date pursuant to section 22.21 of the Consolidated Rules of Practice. The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

#### **V. SETTLEMENT CONFERENCE**

122. Complainant encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of FIFRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint. **A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer within thirty (30) days following its receipt of this Complaint.**
123. In the event settlement is reached, the terms shall be expressed in a written consent agreement prepared by Complainant, signed by the parties, and incorporated into a final order signed by the Assistant Administrator or his designee. The execution of such a consent agreement shall constitute a waiver of Respondent's right to contest any issue of law, fact, or discretion or the amount of any penalties agreed to in the consent agreement. If you wish to arrange a settlement conference, please contact Ms. Danielle Fidler at (202) 564-0660.

#### **VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

124. The following Agency officers, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region II Office of Regional Counsel, the Region II Division of Enforcement and Compliance Assistance, the Office of the EPA Assistant Administrator for Prevention Pesticides, and Toxic Substances, and the EPA



Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint. See Section 22.8 of the Consolidated Rules of Practice.

Date: 9/2/05

  
Robert A. Kaplan  
Director, Special Litigation and Projects Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

## **ENCLOSURES**

Attachment A: Worker Protection Standard, 40 C.F.R. Part 170

Attachment B: Consolidated Rules of Practice, 40 C.F.R. Part 22

Attachment C: FIFRA Enforcement Response Policies

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Second Amended Complaint was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Knolyn Jones, Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, NW, Suite 350  
Washington, DC 20005

Copy, hand delivered:

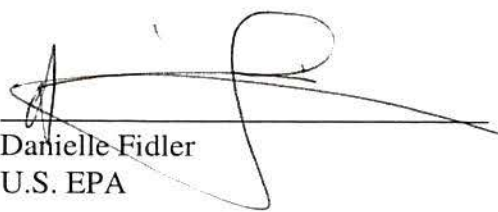
Hon. Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1099 14<sup>th</sup> Street, NW, Suite 350  
Washington, DC 20005

Copy, by FederalExpress:

Venancio Marti  
Martex Farms, S.E.  
Rd. No. 1, Km. 96.2  
Santa Isabel, Puerto Rico 00757

Romano Zampierollo-Rheinfeldt  
Melendez Perez, Moran & Santiago, L.L.P.  
273 Ponce de Leon Avenue  
Scotiabank Plaza, 7<sup>th</sup> Floor  
Hato Rey, Puerto Rico 00917

Dated: Sept. 2, 2005

  
Danielle Fidler  
U.S. EPA